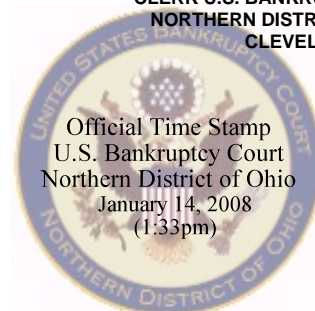


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CLERK U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Case No. 07-18451  
 )  
 ELIZABETH SHARPE, ) Chapter 13  
 )  
 Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **MEMORANDUM OF OPINION**  
 ) **AND ORDER FINDING DEBTOR**  
 ) **ELIZABETH SHARPE, MICHAEL**  
 ) **WILLIAMS AND KENNETH WILSON**  
 ) **IN CONTEMPT AND IMPOSING FINE**

Debtor Elizabeth Sharpe, Michael Williams, and Kenneth Wilson were ordered to appear on December 18, 2007 to address issues raised by the debtor's multiple chapter 13 filings. Ms. Sharpe and Messrs. Williams and Wilson failed to appear on December 18, 2007. For the reasons stated below, Elizabeth Sharpe, Michael Williams and Kenneth Wilson are found to be in contempt of court.

**JURISDICTION**

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

**FACTS AND DISCUSSION**<sup>1</sup>

Debtor Elizabeth Sharpe filed three chapter 13 cases and failed to prosecute each of them. Two of the cases were filed through Michael Williams and Kenneth Wilson pursuant to powers

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<sup>1</sup> In the court's view, the value of this opinion is solely to decide the dispute between the parties, rather than to add anything to the general bankruptcy jurisprudence. For that reason, the opinion is not intended for commercial publication.

of attorney. On December 6, 2007, the court entered an order requiring Ms. Sharpe, Mr. Williams and Mr. Wilson to appear on December 18, 2007 (the show cause order). (Docket 15). Ms. Sharpe was ordered to appear and show cause why she should not be sanctioned based on her filing history, and Messrs. Williams and Wilson were ordered to appear to explain their involvement in the debtor's cases. Ms. Sharpe and Messrs. Williams and Wilson failed to appear on December 18, 2007.<sup>2</sup> The court then entered an order requiring them to appear on January 8, 2008 to show cause why they should not be held in contempt based on their failure to appear in response to the show cause order.<sup>3</sup> (Docket 18). Once again, they failed to appear.

The court must, therefore, consider whether Ms. Sharpe, Mr. Williams, and Mr. Wilson are in contempt of this court's show cause order.

The court's contempt powers derive from "Bankruptcy Code § 105(a) and the inherent power of a court to enforce compliance with its lawful orders." *In re Walker*, 257 B.R. 493, 496 (Bankr. N.D. Ohio 2001) (citations omitted). Contempt must be shown by clear and convincing evidence that the alleged contemnor violated a definite and specific court order which required the performance or the nonperformance of an act with knowledge of that court order. *Id.* at 497. "Willfulness is not an element of civil contempt and intent to disobey the order is irrelevant." *Id.* The alleged contemnor may defend by showing an inability to comply with the order. *Id.*

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<sup>2</sup> Quinton Durham, Yvonne Grimes, and Sonya Durham were also ordered to appear on December 18, 2007 to explain their involvement in the debtor's cases. These individuals appeared, the show cause proceeding was concluded as to them, and the matter was referred to the United States Attorney. (Docket 20).

<sup>3</sup> The court also entered an order barring the debtor from filing a new bankruptcy petition for a period of 180 days. (Docket 19).

Based on the undisputed facts, Elizabeth Sharpe, Michael Williams, and Kenneth Wilson are in contempt of this court's show cause order. Each was served with and had knowledge of the order. The terms of the order were specific and required the three individuals to appear before the court to address issues raised by the debtor's multiple chapter 13 filings. They did not appear on December 18, 2007 in response to the show cause order and they failed to appear on January 8, 2008 to explain why.

These facts clearly and convincingly establish that Elizabeth Sharpe, Michael Williams, and Kenneth Wilson had knowledge of the court's show cause order and failed to comply with it. They were given adequate notice and an opportunity to be heard on the contempt issue, yet they failed to appear and they have not provided any explanation for their failure to comply with the court's order. The court finds, therefore, that Elizabeth Sharpe, Michael Williams, and Kenneth Wilson are in contempt based on their failure to comply with the show cause order.


The next issue is the appropriate consequence for the contempt. The court believes that a coercive per diem fine is appropriate under the circumstances to encourage these individuals to comply with the show cause order. *Id.* at 498. The totality of the circumstances must be considered in determining the appropriate amount of this fine, including: (1) the type of actions that led to the court's issuance of the show cause order; (2) the reasons given for the non-compliance; (3) whether the contemnor has expressed an intention to promptly comply; and the contemnor's financial circumstances. *Id.* Ms. Sharpe and Messrs. Williams and Wilson were ordered to appear on December 18, 2007 to address issues raised by the debtor's three chapter 13 filings in a three year period, each of which was made through a power of attorney. The show cause order was entered because the debtor's filings raise serious concerns regarding possible misuse of the bankruptcy process. Ms. Sharpe, Mr. Williams, and Mr. Wilson did not comply

with the show cause order and they each failed to appear to provide an explanation for their failure to do so. Under these circumstances, a daily fine in the amount \$100.00 is appropriate to encourage these three individuals to reconsider their failure to comply with this court's order.

### **CONCLUSION**

For the reasons stated, Elizabeth Sharpe, Michael Williams, and Kenneth Wilson are found to be in civil contempt based on their failure to comply with the show cause order. Each is required to pay a fine in the amount of \$100.00 for each additional day that they fail to comply. The fines are to be paid to the Clerk's Office of the United States Bankruptcy Court at Cleveland. To purge themselves of the contempt, Ms. Sharpe, Mr. Williams, and Mr. Wilson may each file an affidavit explaining their previous non-compliance in this case and the court will then set the matter for hearing.

IT IS SO ORDERED.

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge